

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

THE CITY OF HUNTINGTON,

Plaintiff,

v.

AMERISOURCEBERGEN DRUG
CORPORATION, et al.,

Defendants.

Civil Action No. 3:17-01362
Hon. David A. Faber

CABELL COUNTY COMMISSION,

Plaintiff,

v.

AMERISOURCEBERGEN DRUG
CORPORATION, et al.,

Defendants.

Civil Action No. 3:17-01665
Hon David A. Faber

DEFENDANTS' NOTICE OF SUPPLEMENTAL AUTHORITY

Defendants respectfully submit the Rhode Island Superior Court's decision in *State v. Purdue Pharma L.P. et al.*, No. PC-2018-4555 (R.I. Super. May 5, 2020) (Exhibit A), as supplemental authority relevant to Defendants' Opposition to Plaintiffs' Motion to Adopt the MDL Court's August 19, 2019 Order Regarding the Federal Controlled Substances Act that was Entered in Different Cases (Dkt. No. 235).

Just as the Plaintiffs have argued in this case, the State of Rhode Island sought a partial summary judgment ruling that Defendants have legal "duties" under the federal CSA to: (1) "maintain effective controls against diversion"; (2) "identify suspicious orders"; (3) "report suspicious orders to [DEA]"; and (4) "decline to ship suspicious orders unless due diligence ensures that the order is not likely to be diverted." *See* Ex. A at 4. The Rhode Island Superior

Court denied the State’s motion, holding that because “the State does not seek a judgment that the Defendants violated any of th[ose] duties,” its motion “is not a proper basis for partial summary judgment and is more akin to an advisory opinion from this Court.” *Id.* at 5–6. The court further concluded that the State had failed to prove the existence of an alleged “no shipping” duty, noting:

The State claims that the federal and state CSAs create an explicit duty for the Defendants to refrain from shipping suspicious orders until due diligence ensures that they will not be diverted to illegal channels. ***This requirement does not appear in the text of the CSAs or the associated regulations.***

Id. at 6–7 (emphasis added).

The Rhode Island Superior Court’s decision provides additional support for Defendants’ argument that the MDL court’s August 19, 2019 ruling was clearly erroneous and should not be adopted here. *See* Dkt. No. 235 at 12–20. Whereas the Rhode Island Superior Court—which was fully aware of the MDL court’s ruling—correctly held that the State’s motion was procedurally improper, the MDL court exceeded its authority by offering an advisory opinion on an abstract question of law untethered to any claims at issue in that case. *Id.* at 13–14. Further, in contrast to the erroneous holding of the MDL court, the Rhode Island Superior Court correctly held that the purported “no-shipping” duty does not exist in the text of the federal CSA or its implementing regulations. *Id.* at 17–20.

Dated: May 8, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on this 8th day of May, the foregoing **“Defendants’ Notice Of Supplemental Authority”** was served using the Court’s CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Jeffrey M Wakefield
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